

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

400I0817

## SENATE BILL NO. 226

Introduced by: Senators Bogue and Moore and Representatives Peterson (Bill) and Olson  
(Mel)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding tax collection  
2 agreements between the state and Indian tribes and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-12A-1 be amended to read as follows:

5 10-12A-1. Terms as used in this chapter, ~~unless the context otherwise requires,~~ mean:

6 (1) "Department," the South Dakota Department of Revenue;

7 (2) "Indian country," those areas ~~subject to federal and tribal jurisdiction as defined in 18~~

8 U.S.C. § 1151(a) and (c); and

9 ~~(2)(3)~~ (3) "Tribal tax," any ~~sales or cigarette~~ tax imposed by an Indian tribe on persons subject  
10 to the Indian tribe's taxing powers.

11 Section 2. That § 10-12A-2 be amended to read as follows:

12 10-12A-2. The Legislature finds that the public interest of both Indians and non-Indians is  
13 best served by close cooperation between the state government and the Indian tribes. The  
14 Legislature finds this cooperation to be especially important in the area of taxation. Accordingly,  
15 the ~~Legislature hereby authorizes the State Department of Revenue~~ department is hereby



1 authorized to enter into tax collection agreements with Indian tribes.

2 Section 3. That § 10-12A-3 be repealed.

3 ~~10-12A-3. The State of South Dakota hereby relinquishes any jurisdiction it may have to levy~~  
4 ~~and collect from Indians within Indian country the following state taxes:~~

5 ~~(1) The retail sales and service tax imposed by chapter 10-45;~~

6 ~~(2) The use tax imposed by chapter 10-46;~~

7 ~~(3) The cigarette tax imposed by chapter 10-50;~~

8 ~~(4) The contractors' excise tax imposed by chapter 10-46A; and~~

9 ~~(5) The alternate contractors' excise tax imposed by chapter 10-46B.~~

10 Section 4. That § 10-12A-4 be amended to read as follows:

11 10-12A-4. The ~~State Department of Revenue~~ department may enter into tax collection  
12 agreements with any Indian tribe under the provisions of this chapter and chapter 1-24. These  
13 agreements may provide for the collection of any ~~tribal sales and service, use, cigarette, and~~  
14 ~~contractors' excise tax or any other tax or fee by the State Department of Revenue for the Indian~~  
15 ~~tribe of the following state taxes and any tribal taxes imposed by a tribe that are identical to the~~  
16 following state taxes:

17 (1) The retail sales and service tax imposed by chapter 10-45;

18 (2) The use tax imposed by chapter 10-46;

19 (3) The contractors' excise tax imposed by chapter 10-46A;

20 (4) The alternate contractors' excise tax imposed by chapter 10-46B;

21 (5) The cigarette tax imposed by chapter 10-50;

22 (6) The motor vehicle excise tax imposed by chapter 32-5B; or

23 (7) The fuel excise tax imposed by chapter 10-47B.

24 The agreement may provide for the retention by the ~~State Department of Revenue~~

1 department of an agreed-upon percentage of the gross revenue as an administrative fee.

2 Section 5. That § 10-12A-4.1 be amended to read as follows:

3 10-12A-4.1. Any tax collection agreement entered into pursuant to this chapter ~~shall be~~ is  
4 binding and effective only after it is approved by the Governor and attorney general of the State  
5 of South Dakota. Prior to approval by the Governor and the attorney general, notice of the  
6 pending agreement shall be published by the ~~Department of Revenue~~ department in the legal  
7 newspaper of the county or counties to be affected by the agreement, not less than two weeks  
8 prior to approval.

9 Section 6. That § 10-12A-5 be amended to read as follows:

10 10-12A-5. A tax collection agreement between the ~~State Department of Revenue~~ department  
11 and an Indian tribe may provide, if agreed upon by the parties, that a fixed percentage of the total  
12 annual state and tribal tax proceeds from an area of Indian country shall be remitted to the Indian  
13 tribe in lieu of the exact amount of the revenue collected as a result of the imposition of tribal  
14 taxes.

15 Section 7. That § 10-12A-6 be amended to read as follows:

16 10-12A-6. Any tax collection agreements between the ~~State Department of Revenue~~  
17 department and an Indian tribe shall be for a term not to exceed five years. Such agreement,  
18 however, ~~shall be~~ is renewable upon expiration by the mutual consent of the parties.

19 Section 8. That § 10-12A-7 be repealed.

20 ~~—10-12A-7. For the purposes of this chapter only, the term, Indian country, includes lands held~~  
21 ~~in trust for any Indian or Indian tribe within the boundaries of any disestablished Indian~~  
22 ~~reservation or within the disestablished portion of any Indian reservation.~~

23 Section 9. That § 10-12A-8 be amended to read as follows:

24 10-12A-8. ~~Except as specifically set out in § 10-12A-3, nothing~~ Nothing in this chapter may

1 be construed to relinquish any jurisdiction the state might have to levy or collect from any person  
2 any tax or fee within Indian country.

3 Section 10. That chapter 10-12A be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 The authority granted by subdivision 10-12A-4(7) is hereby revoked if the South Dakota  
6 Supreme Court or the United States Supreme Court rules that the Hayden-Cartwright Act, 4  
7 U.S.C. § 104, authorizes the state to impose state motor fuel taxes on enrolled tribal members  
8 on Indian country controlled by the member's tribe.

9 Section 11. Whereas, this Act is necessary for the support of the state government and its  
10 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
11 force and effect from and after its passage and approval.